

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

CIVIL MISCELLANEOUS APPEAL NO.1040 OF 2019

J U D G M E N T

(Per Honourable Sri Justice M.S.Ramachandra Rao)

1. This Appeal is filed challenging the order dt.01.07.2019 in I.A.No.429 of 2018 in O.S.No.944 of 2017 of the XV Additional District Judge-cum-II Additional Family Judge, Ranga Reddy District at Kukatpally.

2. The appellant herein is the plaintiff in the above suit and she filed the said suit for partition of the plaint A and B schedule properties and for allotment of 1/9th share to her; to declare the sale deed dt.18.12.1964 bearing Document No.732/1964 executed by mother and brothers of the appellant in favour of one B.Laxmi Narsamma selling Ac.0-29 guntas in Survey No.340 of Moosapet Village described in Schedule-B to the plaint and also to declare the Development Agreement dt.02.04.2016 executed by respondents 18 to 21, the children of Smt. B.Laxmi Narsamma, in favour of respondent No.22 in respect of an extent of 2030.61 sq.yards, as null and void and not binding the plaintiff.

3. It is the plea of the appellant/plaintiff in the plaint that the A and B schedule properties were granted as Inam to her late father-Syed Hyder, by the then Nizam of Hyderabad, that she is a share holder in the said properties, that there was a sale deed dt.18.12.1964 executed by her mother and brothers in favour of Smt B.Laxmi Narsamma in respect of

B schedule property and defendants 18 to 21, who were children of Smt. Laxmi Narsamma, entered into a Development Agreement-cum-GPA on 02.04.2016 with respondent No.22. She contended that she was demanding respondents 1 to 17/defendants 1 to 17 for partition of suit schedule property and respondent No.15/defendant No.15 had informed her of filing of caveat by respondents 18 and 19 referring to above two transactions in respect of the B schedule property.

4. Along with the suit, she filed I.A.No.429 of 2018 under Order XXXIX Rules 1 and 2 CPC for grant of injunction restraining respondents 18 to 22 not to alienate the flats/commercial space of the schedule B property of the plaint pending disposal of the suit.

5. Counter affidavits were filed to the said application by respondents 18 to 21 and also respondent No.22. In the said counter-affidavits, they contended that the petitioner and respondents 1 to 17 colluded to blackmail and extract money from respondents 18 to 22 and filed the present suit in respect of the B schedule property raising false claims. It is contended that apartments in semi-furnished condition along with undivided share of land were already sold by respondents 18 to 22 to prospective buyers and registered sale deeds were also executed and respondent No.22 was carrying on further construction works to complete and handover the respective apartments to the prospective buyers. It is contended that the vendors of Smt. B. Lakshmi Narasamma had represented that they alone were owners of the B schedule property

and executed registered sale deed dt.18.12.1964, that the said property was even mutated in the name of Smt. B.Lakshmi Narasamma and she later executed a registered Will on 30.07.1990 bequeathing the said property to respondents 18 to 21. They pointed out that respondent No.22 had completed five floors as there is no order of injunction and at this stage, if temporary injunction as prayed for is granted, grave and irreparable loss would be caused to respondents 18 to 22. It is also contended that no *prima facie* case exists in favour of the appellant and there is no balance of convenience in her favour either.

6. By order dt.01.07.2019, the Court below dismissed the said application.

7. After referring to the contentions of the parties and the documents filed by the parties, the Court below held that to the knowledge of the appellant, the property had been sold by the legal representatives of Syed Hyder in favour of the mother of respondents 18 to 21 and they entered into an agreement in favour of respondent No.22 and sale transactions were also made by respondent No.22 to third parties in respect of some of the apartments. It held that respondents 18 to 22 had proved their uninterrupted enjoyment over the property since the period of the mother of respondents 18 to 21 i.e. from 1964 onwards, that the instant suit had been filed in 2017 and the application for injunction was filed in 2018. It held that there is no *prima facie* case in favour of the appellant and if respondents 18 to 22 are restrained, they would be put to irreparable loss

particularly since the construction had been almost completed and some of the flats were already sold.

8. Assailing the same, this Appeal is filed.

9. Heard the counsel for the appellant.

10. Learned counsel for the petitioner/appellant contends that grave and irreparable loss will be caused if the appellant is not granted temporary injunction against respondents 18 to 22 restraining them from alienating the commercial space/apartments constructed in B schedule property pending the suit.

11. The transfer of B schedule property in favour of the mother of respondents 18 to 21 by the legal heirs of Syed Hyder, who included the siblings of the appellant under Ex.R1 registered sale deed dt.18.02.1964, is not in dispute. Under Explanation II of Section 3 of the Transfer of Property Act, 1882, such registration itself is public notice and the appellant is deemed to have notice of the transfer of the property and the possession of the purchaser. The possession of respondents 18 to 21, their mother and respondent No.22 is not in dispute. Under Section 3 of the Transfer of Property Act, such possession by the mother of respondents 18 to 21 or respondents 18 to 21 and respondent No.22 is also public notice to the appellant of the factum of transfer of title to the mother of respondents 18 to 21.

12. When this transaction took place in 1964, the appellant cannot keep quiet till 2017, a period of 53 years, and then file the suit and seek to stop alienations of the commercial space/apartments by respondent No.22 who had obtained Development Agreement-cum-GPA in 2016 from respondents 18 to 21.

13. Therefore, we agree with the finding of the Court below that no *prima facie* case exists in favour of the appellant for grant of temporary injunction restraining alienation of the property by respondents 18 to 22.

14. Therefore, we find no merit in the appeal and it is accordingly dismissed. No costs. The Court below is directed to decide the suit uninfluenced by these observations in accordance with law.

15. Pending miscellaneous, if any, shall also stand dismissed.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

18th NOVEMBER, 2019

Gra/Svv